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FEB 3 1988

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January 28, 1988

Mrs. Barbara T. Reid, Director
Municipal Services Division
Department of Revenue Administration
P. O. Box 457
Concord, NH 03301

RE: Interpretation of RSA 31:19-a

Dear Director Reid:

This is in response to your letter to me of December 28, 1987, relative to RSA 31:19-a in which you request a formal opinion from the Attorney General interpreting certain provisions of that statute. It is our opinion that:

- (1) Section 19-a trust fund monies may be held, invested and reinvested only by the trustees of the trust funds; and expended only by trustees or agents of the town established to carry out the objects designated by these trusts.
- (2) Section 19-a trusts can be established only for purposes consistent with the purposes described in RSA 31:19-a.
- (3) Section 19-a trusts must be identified as publicly funded trusts.
- (4) Section 19-a trusts may not be funded by private donations.

The following discussion amplifies the foregoing and contains the reasoning for our opinion.



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(1) Who are the appropriate agents to administer the trust funds established under RSA 31:19-a?

Section 19-a does not by its terms designate which officers or board within the town shall administer the trust funds created pursuant to it. The absence from the statute of implementing provisions might be thought to cast some doubt on the validity or enforceability of the statute. In construing a statute, however, the courts do not look solely to the statute itself but to the legislative intention and to the statutory scheme or context within which the statute was adopted. Section 19-a must be interpreted with these principals in mind.

Section 19-a was enacted as part of that subdivision of Chapter 31 beginning at Section 19 which is titled "Trust Funds." This subdivision establishes a comprehensive statutory scheme for the acceptance, custody, investment, expenditure and accountability of restricted funds held by towns. The first sections of the subdivision describe classes of restricted funds which a town may hold: gifts, legacies and devises for public purposes (RSA 31:19), perpetual care funds (RSA 31:20), and cemetery association funds (RSA 31:21). Section 19-a describes a fourth class of funds which towns may hold in trust, namely appropriated funds restricted by vote of an annual town meeting. From the fact that Section 19-a was inserted at a point in the statute where other classes of funds are described, that the language of 19-a tracks the language of the preceding section and that implementing provisions are uniformly absent from Section 19, 19-a, 20 and 21, the proper inference is that the legislative intention was to create a new class of trust funds to be administered in the same manner and according to the same statutory scheme as the other classes of trust funds described in the preceding and following sections.

We conclude that Section 19-a trusts are to be administered in the same manner as other trusts received by the town under Sections 19, 20 and 21. As you know, administration of these trusts is carried out by a board of trustees known as trustees of the trust funds who have custody of the funds, are bonded, subject to certain restrictions with respect to investment of the funds and certain requirements relative to audit of the funds, record keeping, filing reports and the like. These provisions apply to Section 19-a trusts as they do to other trusts administered by the trustees of the trust funds.

The statute also contains a provision for expenditure of these trust funds. RSA 31:32. It is our opinion that this section applies with respect to the expenditure of Section 19-a funds just as it does to the expenditure of funds held under

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Sections 19, 20 and 21 for the reasons given above. Section 32 provides that these trusts or income thereof (depending on what the trust instrument states) "shall be paid to trustees or agents of the town established to carry out the objects designated by such trusts." It is our opinion that the trustee or agent "established to carry out the objects designated" by said trusts refers to:

- (1) An elected or appointed town official or board which:
 - (a) is authorized by law to expend appropriated monies without further approval of the town meeting; and
 - (b) is named by vote of the town to carry out the objects designated by the trust and to expend the funds thereof in accordance with its terms.

Among the town boards and officials which have statutory authority to expend without further approval of the town are the selectmen in the exercise of their statutory authority to "manage the prudential affairs of the town" (RSA 41:8); cemetery trustees (RSA 289:7), library trustees (RSA 202:A:11 and 23) and the conservation commission (RSA 36-A:5).

- (2) Whether Section 19-a trusts may be established for any public purpose?

Read literally, the provision in RSA 31:19-a permitting 19-a trusts to be established "for any other public purpose" would allow towns to avoid entirely legislative restrictions upon municipal expenditures contained in other statutes. Among these is RSA Chapter 35 which authorizes the establishment by towns of capital reserve funds subject to a number of restrictions and limitations. A literal construction of the "any other public purpose" provision in RSA 31:19-a would, therefore, effectively nullify Chapter 35, a result the legislature cannot be presumed to have intended; and one that principles of statutory construction disfavor. To the extent it is possible to do so, separate laws must be construed so as to harmonize with one another and give effect to the legislative intention expressed in each law. The legislature could have repealed Chapter 35 when it enacted RSA 31:19-a. From its failure to do so the correct inference to be drawn is that the legislature intended by its reference in Section 19-a to "any other public purpose" to describe only public purposes other than "construction, reconstruction or aquisition" (RSA 35:1 I - IV), or "extraordinary legal fees" (RSA 35:1 V). It is also noteworthy that Section 19-a tracks in every respect but one the language in the section preceding it (RSA 31:19). The noteworthy exception is the omission from section 19-a of the word "establishment." Thus, for example, a town may accept a

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charitable gift under Section 19 for the "establishment, maintenance and care" of a library; but may create a trust under Section 19-a only for its "maintenance and care."

Given the fact that the language of the two statutes is otherwise identical, omission of the word "establishment" from Section 19-a is presumed to have been conscious and not inadvertent. Thus, legal effect must be given to the omission and the only legal effect which can be given is to exclude from the classes of trusts permitted by Section 19-a those for the "establishment" of public facilities such as those for which capital reserve funds must be established under Chapter 35. The general language in 19-a - "any other public purpose" - cannot be construed to include that which the same law specifically excludes.

For the foregoing reasons it is our opinion that Section 19-a trusts cannot be created for the establishment of any of the facilities listed in RSA 31:19; nor for any purpose for which a capital reserve fund may be created under RSA 35:1, RSA 35:1-a and RSA 35:1-b. The practical import of these legislative limitations on the purposes for which Section 19-a trusts may be established is to restrict their use largely to public purpose expenditures which recur with some frequency (as opposed to the occasional need to construct a building) but at intervals which cannot be accurately predicted and/or may be conveniently postponed. The most common examples of such trusts are those for maintenance and care. The statute, however, does not limit such trusts to maintenance and care but refers in clauses separated by semi-colons to trusts for planting and care of shade trees and for any other public purpose. And it is our opinion that the legislative listing of specific purposes set forth in RSA 31:19-a (maintenance and care of libraries, reading rooms, schools, parks, cemeteries, burial lots, planting and care of trees) was intended as illustrative rather than definitive or exclusive. If such were not the case, the words "any other public purpose" would add nothing to the statute. We, therefore, conclude that trusts consistent with the nature of maintenance and care trusts, i.e., trusts whose purpose is intended to fund recurring expenditures at intervals which cannot be accurately predicted and/or which may be conveniently postponed are lawful under RSA 31:19-a.

(3) Whether is it appropriate to title Section 19-a trusts by the use of private names?

We assume this relates to the last problem you raise, namely the utilization of private donations to fund 19-a trusts. The practice of titling certain trust funds received from the donors in a manner which memorializes the name of the donor, e.g., "The Joe Smith Trust Fund," is a common, accepted and helpful practice with respect to donations made to the town by private donors which

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are held by the trustees of the trust funds under Section 19. However, Section 19-a trusts are by definition funded by town monies, not by private donations. The town creates a trust under Section 19-a in the same manner a private donor creates a trust: by manifesting an intention to restrict funds for a particular purpose and by transferring the restricted funds to an independent trustee. The town is the settlor of a 19-a trust just as the hypothetical Joe Smith was the settlor of the "Joe Smith Trust Fund" established under Section 19. Following the custom of towns with respect to Section 19 trusts and more practically to identify the source of funds in a 19-a trust for the benefit of those who examine various town reports and those interested at some point in the future, Section 19-a trusts should be appropriately titled in a manner which reflects the source of the funds, e.g., "the town of library maintenance fund."

(4) Whether Section 19-a trusts may be established by private donations?

The answer to this question is no. The legislative grant of authority to towns to accept private donations is found in RSA 31:19 - "Towns may take and hold in trust gifts, legacies and devises made to them..." Without this statutory authority towns would be unable to accept private donations. Keene v Union School District, 89 N.H. 477 (1938). The grant is full and complete. It permits towns to hold private donations for "the establishment, maintenance and care of [public facilities] and for other public purposes." RSA 31:19. Section 19-a adds nothing to this grant. It confers no authority upon towns which they were not already able to exercise under RSA 31:19. In fact if it were interpreted as, in some manner reaffirming the grant already made in the preceding section, Section 19-a would be in conflict with the older statute. A statute will not be interpreted in a manner which renders it meaningless or brings it into conflict with pre-existing law if there is an alternative interpretation which will give it meaning and harmonize it with other legislation. Such an alternative interpretation of Section 19-a is readily apparent.

The principle difference between the statutes lies in the source of the trust corpus. Under Section 19, "Towns may take and hold in trust gifts," i.e., private donations. Section 19-a permits towns "to create" such trusts, i.e., to transfer to a trustee property to which it has title free of trust. Since private donations are by definition already held in trust, RSA 31:19, Section 19-a by necessary implication permits trusts to be created only with "sums of money" other than private donations, i.e., monies raised by taxes or obtained by the town from some source other than private gifts and not encumbered by restrictions. These monies, being public and unencumbered by

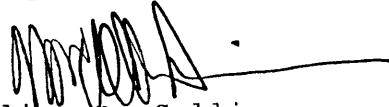
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trust or restriction arising from a gift, may be restricted by
vote of the town for the purposes set forth in the section.

If we may be of any further assistance, please do not
hesitate to call.

Very truly yours,

A handwritten signature in dark ink, appearing to be 'William B. Cullimore', with a long horizontal line extending to the right.

William B. Cullimore
Director

WBC:rf